

In re: ARMENO FOODS, INC.
PACA Docket No. D-02-0010.
Decision Without Hearing by Reason of Default.
Filed August 13, 2002.

PACA – Default – Payment, failure to make full, prompt.

Clara Kim, for Complainant.
Respondent, Pro se.

Decision issued by James W. Hunt, Chief Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (hereinafter referred to as the “Act” or “PACA”), instituted by a Notice to Show Cause and Complaint filed on February 27, 2002, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period July 2001 through November 2001, Respondent, Armeno Foods, Inc., (hereinafter “Respondent”) failed to make full payment promptly to 4 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$96,520.88 for 53 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce.

Respondent’s PACA license terminated on August 22, 2001, pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(a)), because Respondent failed to pay the required renewal fee. On January 28, 2002, Complainant received Respondent’s completed application for a new PACA license. Due to Respondent’s failures to make full payment promptly for its purchases of perishable agricultural commodities as stated above, Complainant alleges that Respondent has engaged in practices of a character prohibited by the PACA and is therefore unfit to engage in the business of a commission merchant, dealer, or broker. In accordance with Section 4(d) of the Act (7 U.S.C. § 499d(d)), Complainant withheld the issuance of a new license pending its investigation to determine whether Respondent was unfit to engage in business subject to the Act. Subsequently, the Associate Deputy Administrator filed the Notice to Show Cause why Respondent should not be denied a PACA license and Complaint on February 27, 2002. On February 28, 2002, the Hearing Clerk mailed the Notice to Show Cause and Complaint to Respondent via certified mail at its last known business address at 109 Prospect Place, Hillsdale, New Jersey 07642 but it was returned unclaimed by the U.S. Postal Service on April 9, 2002. On April 11, 2002, the Hearing Clerk re-sent the Notice to Show Cause and Complaint, via

regular mail, to the home of Respondent's President, Gregory Minasian at 137 Patrick Avenue, Emerson, New Jersey 07630.

Complainant's counsel filed a Motion for Expedited Hearing on March 27, 2002. In that motion, Complainant's counsel requested that a hearing be held on or before March 29, 2002, in order to meet the statutory mandate of providing Respondent an opportunity for hearing within 60 days from the date of the license application (7 U.S.C. § 499d(d)).

The case was assigned to the undersigned on March 27, 2002. I attempted to contact Gregory Minasian, President of Respondent, by telephone, but those attempts were unsuccessful. On March 28, 2002, I issued an Order Scheduling Hearing. That order directed that an oral hearing be conducted by telephone on March 29, 2002, at a time acceptable to Respondent. It further stated that Respondent might contact me to waive the right to a hearing by March 29, 2002, and request a hearing at another date. The Hearing Clerk sent the Order Scheduling Hearing to Respondent via over-night express mail on March 28, 2002, to Respondent's last known business address at 109 Prospect Place, Hillsdale, New Jersey 07642. It was returned because Respondent was no longer located at that address. Respondent did not notify the Department of its current business address.

The hearing by telephone commenced in this proceeding at approximately 2:45 p.m. on March 29, 2002. Complainant was represented by Clara Kim, Esq. Respondent did not make an appearance in person or by telephone. Due to these circumstances, I stated that the hearing would be continued in order to allow Respondent further opportunity to participate. On April 1, 2002, I issued an Order Continuing Hearing and directed Respondent to contact my office to schedule a date to reconvene the hearing.

On April 3, 2002, Respondent was served the following documents at the home of its President, Gregory Minasian, at 137 Patrick Avenue, Emerson, New Jersey 07630: Notice to Show Cause and Complaint; Order Scheduling Hearing; Order Continuing Hearing; and Rules of Practice (7 C.F.R. § 1.130 et seq.).

On May 3, 2002, Complainant filed a Motion for Decision Without Hearing by Reason of Default.

On June 3, 2002, Mr. Minasian filed a letter stating that he had received the Complaint at his home address on May 10, 2002, and acknowledged that "the only thing I am guilty of is paying my vendors late." He also stated that Respondent's office location was 192 Third Avenue, Westwood, New Jersey 07675.

On July 2, 2002, I issued an order denying Complainant's Motion for Default Decision "at this time" and ordered Respondent to provide by July 15, 2002, its current business address, telephone and facsimile numbers in order to re-schedule the hearing. The order was sent to addresses for both Respondent and Mr. Minasian. There was no reply from either Respondent or Mr. Minasian. On July 29, 2002, Respondent was directed to show cause by August 9, 2002, why a default decision should not be issued. Respondent did not reply to the show cause order.

Accordingly as Respondent has failed to request a new date for a continuance of the hearing, failed to avail itself of the opportunity to show cause why its application for license should not be denied, and failed to file an answer, Complainant's motion for the issuance of a Default Order Without Hearing by Reason of Default is now granted.¹ The following Decision and Order is therefore issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent, Armeno Foods, Inc., is a corporation organized and existing under the laws of the State of New Jersey. Its business addresses have been 109 Prospect Place, Hillsdale, New Jersey 07642 and 192 Third Avenue, Westwood, New Jersey 07675. Respondent's president is Gregory Minasian. His mailing address is Gregory Minasian, 137 Patrick Avenue, Emerson, New Jersey 07630.

2. PACA license number 951813 was issued to Respondent on August 22, 1995. This license terminated on August 22, 2001, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required renewal fee.

3. At all times material herein, Respondent has operated subject to the PACA.

4. During the period June 2001 through October 2001, Respondent purchased, received, and accepted in interstate and foreign commerce, from 4 sellers, 53 lots of vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, or balances thereof, in the total amount of \$96,520.88.

5. On January 28, 2002, Complainant received Respondent's completed application for a PACA license.

6. A Complaint was filed against Respondent alleging that it violated Section 2(4) of the Act (7 U.S.C. § 499b(4)) for failing to make full payment promptly for the purchases found in paragraph 4 above.

7. Respondent failed to file an Answer.

Conclusions

Respondent was given an opportunity for a hearing to show cause why its application for a PACA license should not be denied, pursuant to Section 4(d) of

¹In the event Mr. Minasian's June 3, 2002, letter could be considered an answer, it admits the allegations in the Complaint and thus warrants a default decision pursuant to Section 1.136 (7 C.F.R. § 1.136).

the Act (7 U.S.C. § 499d(d)). Respondent failed to avail itself of its right to a hearing and failed to file an Answer to the Complaint. A hearing was held on March 29, 2002, during which Respondent did not make an appearance. Respondent's failures to make full payment promptly with respect to the 53 transactions set forth in Finding of Fact No. 4 above, constitute willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. §499b(4)). As a result of Respondent's failures to make full payment promptly for its purchases of perishable agricultural commodities, Respondent has engaged in practices of a character prohibited by the PACA. Pursuant to Section 4(d) of the Act (7 U.S.C. § 499d(d)), Respondent is unfit to engage in the business of a PACA commission merchant, dealer, or broker.

Order

Respondent has committed willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)). The facts and circumstances of the violations set forth above shall be published.

Respondent is unfit to be licensed under the PACA. Its application for a PACA license is denied.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

[This Decision and Order became final October 24, 2002. - Editor]
